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WP-26884-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 23<sup>rd</sup> OF SEPTEMBER, 2024WRIT PETITION No. 26884 of 2024*SMT. ANITA SHRIVASTAVA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri R.P. Singh with Shri Niraj Shrivastava - Advocate for the petitioner.*

*Shri S.S. Kushwah - Government Advocate for the respondents/State.*

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ORDER

Petitioner has preferred this writ petition under Article 226 of the Constitution of India challenging the order dated 29.8.2024 (Annexure P/1) by which the petitioner has been suspended by the SDO (Revenue), Bhitwar, District Gwalior.

2. Brief facts of the case are that the petitioner has been initially appointed on 29.6.2006 on the post of Patwari. As per Rule 104(2) of M.P. Land Revenue Code, 1959, Collector is the appointing authority of the Patwari but respondent No.3 SDO (Revenue), Bhitwar, District Gwalior has passed the order dated 29.8.2024 regarding suspension of the petitioner. Impugned order reflects the service record of the petitioner. Respondent No.3 was not having any jurisdiction to pass the aforesaid order. Being aggrieved by the same, petitioner has preferred the instant writ petition.



3. Learned counsel for the respondents opposed the prayer and prays for its rejection by submitting that it is not a fit case to entertain the petition when the alternative remedy is available to the petitioner and respondent No.3 has appointed the petitioner and, therefore, he has rightly passed the impugned order and petition deserves to be dismissed.

4. Both the parties are heard at length and perused the record.

5. It is now settled by the Apex Court in series of decisions that when an order is passed without jurisdiction, the same can be challenged before the High Court in a petition under Article 226 of the Constitution and in such cases, the High Court should entertain the writ petition as the order is passed without jurisdiction. The Apex Court in **Whirlpool Corporation vs. Registrar of Trade Marks [AIR 1999 SC 22]**, has held that the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

6. Learned counsel for the petitioner contended that respondent No.3 is not the competent authority to issue the order of suspension against the petitioner because the petitioner has been appointed by respondent No.2/Collector. Therefore, the order of suspension is beyond the authority and beyond the jurisdiction.

7. Section 104 (2) of M.P. Land Revenue Code, 1959 provides as under:-



(2) The Collector shall appoint a patwari to each patwari halka and a Nagar Sarvekshak to each sector for maintaining correct land records and for such other duties as may be prescribed.

8. Division Bench of this Court in the case of **N.C. Gupta vs. State of M.P. & Ors.** reported in 2007 (1) MPWN 2 held that as per Rule 7 and 9 of Civil Services (Classification Control and Appeal) Rules, 1966, suspension of Government servant can be ordered only by appointing authority else it would be without jurisdiction.

9. It is noteworthy that after the amendment in sub-section (2) of Section 104 of M.P. Land Revenue Code and also in sub-clause (xix) of sub-section (2) of section 258 the Notification dated 9th October, 1959 shall have no application in the present case. No other notification has been shown by which the Sub-Divisional Officer has been empowered by the State Government to appoint a Patwari and rightly so because the substantive section of the M.P. Land Revenue Code, 1959 i.e. section 104(2) itself empowers the Collector to appoint Patwari. Thus, even though the notification is issued by the State Government but that will not have the effect of damaging the substantive section 104(2) which may run contrary to the Notification.

10. Although learned counsel for the respondents relied upon the judgment of Division Bench in the case of **Mangilal vs. State of M.P. & Ors.** reported in 1995 RN 67 in which it has been held that the powers of appointment of Patwari delegated to the Sub-Divisional Officer, therefore,



the dismissal by the SDO cannot be said to be in violation of Article 311 of the Constitution of India but later on Section 104 (2) of M.P. Land Revenue Code has been amended and substituted by M.P. Land Revenue Code (Amendment) Act, 2018 (No.23 of 2018). This citation is not applicable in the instant matter.

11. On the contrary, the Co-ordinate Bench of this Court in the case of **Vinod Kumar Khare vs. State of M.P. & Ors.** reported in 2008 (4) MPLJ 44 it has been held that "under Section 104 (2) of M.P. Land Revenue Code, the Collector is empowered to appoint Patwari, therefore, the power to dismiss him vest in the Collector and order of removal of the petitioner Patwari passed by the SDO is without jurisdiction and is set aside".

12. For the aforesaid reasons, this Court is of the considered opinion that the impugned order (Annexure P/1) passed by respondent No.3 is beyond jurisdiction. Only Collector have power to dismiss the Patwari as per the provisions of Section 104 (2) of M.P. Land Revenue Code. Therefore, the impugned order is certainly without jurisdiction. No other statutory provision has been pointed out by the learned Government Advocate nor any provision has been brought to the notice of this Court to place the petitioner under suspension by respondent No.3.

13. Resultantly, impugned order dated 29.8.2024 (Annexure P/1) placing the petitioner under suspension is hereby quashed, however, the respondents shall be free to take appropriate action in the matter, in accordance with law, keeping in view the provisions of Rules of 1966, against the petitioner.



14. With the aforesaid, writ petition stands allowed and **disposed of**.

15. Certified copy as per rules.

(ANIL VERMA)  
JUDGE

(alok)